IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1848 OF 2005

Ms.Stella A.Machado & Ors. .. Petitioners.

Vs

A.H.Wadia Charity Trust & Ors. .. Respondents.

Mr.S.G.Aney, senior counsel with Mr.Bajaj and Ms.S.T.Shaikh i/b S.K.Srivastav for the petitioners.

Mr.P.A.Diwan with Mr.Ahmed Sayed i/b Dhru & Co. for respondent no.1a, 1b, 1d, 1e.

Mr.Aspi Chinoi, senior counsel with Mr.Umesh Shetty for respondent nos.2 and 14.

CORAM : V.G.PALSHIKAR &
D.B.BHOSALE, JJ.

DATED : 19TH OCTOBER, 2005.

ORAL ORDER (PER D.B.BHOSALE, J.)

. Heard learned counsel for the parties.

2. This writ petition under Article 226 of the Constitution of India is directed against the judgment and order dated 10.5.2005 rendered by the Joint Charity Commissioner, Greater Mumbai Region, Mumbai rejecting the application filed under section 36(2) of the Bombay Public Trust Act, 1950 (for short ‘the Act’). The said application was filed by the petitioners seeking revocation of the order dated 31.12.2003 passed under section 36(1)(a) of the Act,

sanctioning the sale of land of respondent no.1 - trust bearing Survey No.292, Hissa No.11(pt) village Kolekalyan admeasuring 6 acres, 16 gunthas (for short 'the said land'). Admittedly, pursuant to the order under section 36(1)(a) a deed of conveyance had been executed by respondent no.1 - trust in favour of respondent no.2 - firm on 15.6.2004.

3. The petitioners claim to be the heirs and legal representatives of one Anthony Louis Machado, who, according to them, was lessee in the said land since 1949 at a monthly rent of Rs.116/-. Anthony died intestate at Mumbai on 30.12.1983. He had allegedly constructed several structures in the said land and inducted tenants therein. Several suits filed by Anthony for recovery of possession are pending in different courts even today. The petitioners are pursuing those suits as heirs and legal representatives of said Anthony.

4. The submissions, assailing the impugned order, of Mr.Aney, learned senior counsel for the petitioners are two fold. Firstly, the Joint Charity Commissioner committed grave error of law in placing reliance upon the judgment of this Court in **Shri Mahadeo Deosthan Vs. Joint Charity Commissioner (1989) Mh.L.J. 269** and, secondly, the impugned

judgment even on merits is not sustainable. Mr.Aney submitted that the Joint Charity Commissioner wrongly placed reliance on the judgment in **Mahadeo Deosthan's** case to hold that the Charity Commissioner under section 36(2) of the Act cannot revoke sanction granted under section 36(1)(a) after the sanction itself merges into a sale deed and the property loses the character as that of a trust property. The said judgment holds that the power of revocation can be exercised only qua the property of the trust and not after the sale deed, for a simple reason that when a sale deed is executed, the trust is then divested of that property and interest of third parties intervene. Mr.Aney submitted that the provision of section 36(2) cannot be interpreted to destroy the right created under it and any interpretation which renders the provision redundant is impermissible. The provision of section 36(2) is not qua the property to render its sale nugatory but it is qua the Charity Commissioner's orders. In short, Mr.Aney submitted that the view expressed in **Mahadeo Deosthan's** case (supra) is either not correctly interpreted or is wrong and, therefore, requires reconsideration.

5. On merits Mr.Aney submitted that the Charity Commissioner was misrepresented by the trust and they

played fraud by suppressing the fact of stay for sale granted by this Court. It was further pointed out that respondent no.2 was not a registered partnership firm at the relevant time and that all the partners, as claimed by the said partnership firm, were not occupants of the said property. One of the partners was admittedly not in occupation of the said property. The Charity Commissioner was misrepresented that there was no stranger in the property. This assumes importance since the permission to alienate the property was sought in favour of the occupants. Lastly, he submitted that the right of sub-lessees over the right of the petitioners only was considered keeping aside the petitioners' right in the said property as lessees. In support of his contentions he placed reliance upon the following judgments: **(1) (1994) Supreme Court Cases 1 S.P.Chengalvaraya Naidu (Dead) by LRs. Vs. Jagannath (Dead) by LRs and Others; (2) (2003) 8 Supreme Court Cases 311 - Ram Preeti Yadav Vs. U.P.Board of High School and Intermediate Education and Others; (3) Mahadeo Deosthan' case (supra)**. On the other hand Mr.Chinoy, learned senior counsel for respondent no.2 submitted that the petition proceeds on the wrong premise that the Charity Commissioner dismissed the petitioners' application under section 36(2) of the Act only on the ground that it was not

tenable in view of the judgment of this Court in **Mahadeo Devasthan's case** (supra). We were taken through the impugned judgment in support of this submission and it was pointed out that the Charity Commissioner considered the merits also. He further pointed out as to how the findings on merits are sustainable and that they do not deserve interference by this Court under Article 226 of the Constitution of India. In short, he submitted that even if it is assumed that the reliance was wrongly placed upon the judgment in **Mahadeo Devasthan's** case or ratio laid down therein is wrong still the impugned order is sustainable in law inasmuch as it was passed on merits and in view thereof there is no need to consider whether the law laid down by this Court in the said judgment is correct.

6. We heard the learned counsel for the parties for quite sometime and with their assistance perused the impugned judgment and other material placed before us. At the outset let us observe that the Charity Commissioner dismissed the petitioners application under section 36(2) of the said Act, seeking revocation of the sanction dated 31.12.2003, not only on the ground that it was not maintainable in view of the judgment in **Mahadeo Devasthan's** case but also on merits. The Charity Commissioner after

considering the merits of the contentions raised by the petitioners has categorically recorded its finding that the sanction dated 31.12.2003 was not vitiated on account of misrepresentation or fraud and has come to a specific finding that there was no concealment of the material fact and no misrepresentation or fraud practiced on the Charity Commissioner. A perusal of the judgment clearly shows that the Charity Commissioner has not only quoted the submissions advanced on behalf of the petitioners on merits but has also considered each of them and recorded its findings for rejecting the said submissions. We, therefore, would like first to examine whether the order of Charity Commissioner on merits is sustainable and deserves interference by this Court in its jurisdiction under Article 226 of the Constitution.

7. Insofar as the allegations of suppression of the stay for sale of the said land granted by this Court in Writ Petition No.39/01 is concerned, it appears that Application No.13/99 was filed before the Charity Commissioner by Estella A.Machado against the respondent-trust and in that application the Charity Commissioner had granted order of injunction on 30.12.2000. By that order the trust was restrained from alienating the said property without

following the due procedure of law and the provisions of section 36 of the Act. That order was carried in Writ Petition No.39/01 by respondent no.14 in which this Court stayed the order dated 30.12.2000. This clearly shows that there was no order prohibiting the trust from alienating the said property. Moreover, it may be noticed that by order dated 30.12.2000 the trust in fact allowed to alienate the said property by following due procedure of law or by following the procedure under section 36(1) of the said Act. Furthermore, this Court while granting stay to the order dated 30.12.2000 of the Charity Commissioner did not pass any order restraining the trust from alienating the trust property. In view thereof it cannot be said that there was either misrepresentation or fraud practiced while obtaining the order under section 36(1)(a) of the said Act.

8. It was not disputed before the Charity Commissioner, as recorded by him in paragraph 12 of the impugned order, that the sale deed was not in accordance with the terms and conditions of the agreement nor did the petitioners could point out before this Court as to why the sale deed is not in pursuance of the sanctioned order. It is true that all the partners of the respondent no.2 - firm were not in occupation of the said property and members of

respondent no.14. One of the partners of respondent no.2-firm was not in occupation. However, it may be noticed that although the order under section 36(1)(a) dated 31.12.2003 notes that respondent no.2-firm comprises some of the occupants of the property, that was not the basis of the sanction. The Charity Commissioner in the impugned order has also noted that the order under section 36(1)(a) was not passed on the basis that all the partners of respondent no.2 were occupants and members of respondent no.14. It is clearly reflected in the order that the sanction order was granted knowing fully well that some partners of respondent no.2 were not occupants of the property nor the members of respondent no.14. This clearly demonstrates that the sanction order had not been secured by fraud or misrepresentation. In short, it is clear from the impugned order and the other material placed before us that the Charity Commissioner who granted sanction under section 36(1)(a) did not proceed on the assumption that all the partners of respondent no.2 were the occupants and members of respondent no.14. It is clear from the record that the sanction had been sought and granted in the name of Samata Industrial Developers i.e. respondent no.2 and that sanction had not been sought on the basis that respondent no.2 and its all partners were occupants

of the property. In any case the Charity Commissioner was not misrepresented by saying that there was no stranger in the said property and the permission under section 36(1) is sought only in favour of the occupants.

9. As a matter of fact the impugned order records that the property was encumbered by the occupants, it had been valued by Government approved valuer to Rupees one crore only, and despite advertisement published in the newspaper inviting offers, only one offer had been received. Moreover, it further records that the petitioners claiming to be lessees of the said property had sought to be impleaded in the sanction proceedings and when their application was rejected by the Charity Commissioner, they had filed writ Petition No.8032/2003 in this Court and had made offer of Rs.2.50 crores i.e. more than the offer of respondent no.2 which was of Rs.2.07 crores. This Court had required the petitioners to deposit Rs.50 lakhs and had defferred the sanction proceedings. The petitioners had, however, failed to deposit the sum of Rs.50 lakhs and their petition had, accordingly, been dismissed.

10. Insofar as the last submission of Mr.Aney that the right of the petitioners, who claims to be

lessees of the said property was not considered is concerned, let us note that several proceedings are pending between sub-lessees and the petitioners in different courts in which the right of the petitioners as a lessee is also subject matter and, therefore, that assertion of the petitioners will be taken care of in those proceedings. Moreover, the petitioners have every right to take appropriate proceedings for determination of their right, if any, in the said property as may be advised against respondent no.2 which has purchased the said property from the trust. We are satisfied that no fraud or misrepresentation was practiced on the Charity Commissioner as alleged while obtaining the order under section 36(1) of the said Act. Furthermore, the record reveals that pursuant to the sanction dated 31.12.2002 respondent no.2 has made payment of Rs.2.7 crores and the property has also been conveyed to it on 15.6.2004, whereas the petitioners filed application under section 36(2) seeking cancellation of the sale transaction in January 2005. On merits the impugned order cannot be faulted and deserves no interference under Article 226 of the Constitution. It is in this view of the matter we do not deem it necessary to enter into a controversy raised by the petitioners as to whether the ratio laid down by this court in **Mahadeo Devasthan's** case is correct and

requires reconsideration. Keeping in view the overall facts and circumstances of the case we find no merit in the writ petition and hence it is liable to be dismissed. Order accordingly.

(D.B.Bhosale, J.) **(V.G.Palshikar, J.)**